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TB File No. 20-71093

Attorneys for *Secured Creditor* Selene Finance LP

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

IN RE:

CENSO LLC.,

Debtor.

BK Case No. 19-16636-mkn

Chapter 11

**RESPONSE TO MOTION TO VALUE  
COLLATERAL AND MODIFY  
RIGHTS OF SELENE FINANCE LP  
PURSUANT TO 11 U.S.C §506(a),  
§1111, AND §1123 (1161 DANA MAPLE  
COURT, LAS VEGAS, NV 89123)**

**RESPONSE TO MOTION TO VALUE COLLATERAL**

Selene Finance LP (“Creditor”) as secured creditor of the above-entitled Debtor, Censo, LLC (hereinafter “Debtor”), hereby responds to Debtor’s Motion to Value Collateral (“Motion”). The basis of the objection is stated below:

**I. STATEMENT OF FACTS**

On or about April 16, 2009, Kathleen Fraker (“Borrower”) executed a promissory note in the principal sum of \$219,850.00 (the “Note”), which was made payable to Taylor, Bean & Whitaker Mortgage Corp. The Note is secured by a deed of trust (the “Deed of

1 Trust”) encumbering the real property located at 1161 Dana Maple Court, Las Vegas, NV  
2 89123 (“Subject Property”).<sup>1</sup> Creditor currently holds possession of the Note, which is  
3 indorsed in blank, and the Deed of Trust has been assigned to Creditor. The Borrower is  
4 not a party to this bankruptcy proceeding.

5 Borrower ultimately failed to pay the Homeowners Association (“HOA”) fees and  
6 the HOA subsequently recorded a lien, a notice of default, and ultimately proceeded to  
7 hold its foreclosure sale. At the sale, an entity known as KE Aloha Holdings LLC (“HOA  
8 purchaser”) purchased the Subject Property for \$16,500.00. The HOA purchaser then  
9 filed a complaint in state court to quiet title in its own name.  
10

11 On December 31, 2014, a Quitclaim Deed purporting to transfer the property to  
12 Ke Aloha Holdings Series V, of the Ke Aloha Holdings LLC, A Nevada Series Limited-  
13 Liability Company was recorded with the Clark County Recorder’s Office.

14 On December 11, 2018, Censo LLC was formed with the Nevada Secretary of  
15 State.

16 On January 9, 2019, a Grant, Bargain, Sale Deed purporting to transfer the  
17 property to Censo LLC was recorded with the Clark County Recorder’s Office.  
18

19 On January 16, 2019, the state court granted Defendant’s Motion for Summary  
20 Judgment and found that the HOA purchaser holds an interest in the property subject to  
21 the underlying First Deed of Trust. Undeterred in its attempt to obtain the Subject  
22 Property for pennies of its actual worth, Censo LLC filed the instant Bankruptcy Case on  
23 October 11, 2019. The filing of this bankruptcy petition is merely a delay tactic employed  
24

25  
26  

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1 The Note and Deed of Trust are collectively referred to herein as the “Loan.”

1 by the debtor to delay Secured Creditor from foreclosing on its deed of trust, as it is legally  
2 entitled to do.

3 On February 6, 2020, Creditor filed its Proof of Claim with a total secured claim  
4 in the amount of \$330,345.25 and a pre-petition arrearage claim in the amount of  
5 \$137,660.41. *See* Claim No. 1-1 on the Claim Register.

6 On July 15, 2020, Debtor filed a Motion to Value Collateral seeking to limit  
7 Creditor's claim to a purported fair market value of \$280,000.00 based upon an appraisal  
8 dated January 2, 2019.

## 9 II. ARGUMENT

### 10 A. THERE IS NO CONTRACTUAL PRIVITY BETWEEN THE PARTIES 11 AND DEBTOR CANNOT MODIFY CREDITOR'S CLAIM WITHOUT 12 VIOLATING 11 U.S.C. §524(e).

13 The most substantially flaw with the Debtor's Motion is that the Debtor cannot  
14 modify the underlying claim as the Debtor, Censo LLC, does not have contractual privity  
15 with Creditor, and any modification would impermissibly modify the liability of non-  
16 debtor, Kathleen Fraker. The Debtor has no contractual relationship with Creditor or  
17 liability on the underlying debt. By proposing to modify the instant claim, Debtor is  
18 unilaterally forcing Creditor to extend financing to Debtor on terms that the Debtor  
19 proposes. Moreover, any modification of Kathleen Fraker's respective personal liability,  
20 would violate 11 U.S.C. §524. Section 524(a) provides for the discharge of personal  
21 liability on certain debts *of the debtor*. Section 524 does not, however, provide for the  
22 release or modification of personal liability for a third party non-debtor. To the contrary,  
23 11 U.S.C. § 524(e) expressly provides that a discharge of a debt of the debtor does not  
24 affect the liability of any other entity on, or the property of any other entity for, such debt.  
25 11 U.S.C. § 524(e). The Ninth Circuit has repeatedly recognized this and reiterated for  
26 over two decades that the bankruptcy court does not have the authority to release the

1 liability of non-debtors, and a plan which contains such a provision may not be confirmed.  
 2 *Deocampo v. Potts*, 836 F.3d 1134, 1143 (9th Cir. 2016)(noting that “we have ‘repeatedly  
 3 held without exception’ that, in a Chapter 11 proceeding, ‘§524(e) precludes bankruptcy  
 4 courts from discharging the liabilities of non-debtors.”)(citing *In re Lowenschuss*, 67 F.3d  
 5 1394 (9<sup>th</sup> Cir. 1995)); *see also*, *Stratosphere Litig. L.L.C. v. Grand Casinos, Inc.*, 298 F.3d  
 6 1137, 1143 (9th Cir. 2002); *In re American Hardwoods, Inc.*, 885 F.2d 621, 626 (9<sup>th</sup> Cir.  
 7 1989); *In re Sun Valley Newspapers, Inc.*, 171 B.R. 71, 77 (9<sup>th</sup> Cir. B.A.P. 1994).

8 The Debtor’s Motion, however, seeks to alter and modify the personal liability of  
 9 non-debtor, Kathleen Fraker. Here, Debtor is neither liable for nor a party to any of the  
 10 Note and Deed of Trust. Despite this fact, Debtor’s Motion seeks to modify the terms of  
 11 the Loan on the basis that Debtor received an interest in the Property through the HOA  
 12 sale. The Kathleen Fraker, however, remains liable for the debt pursuant to the loan  
 13 documents. Based upon the foregoing, Creditor’s claim cannot be modified as such a  
 14 modification would effectively discharge the liability of non-filing Kathleen Fraker in  
 15 violation of Section 524(e). Any attempt to value the collateral, as a consequence, is  
 16 irrelevant and immaterial and for this reason, the instant Motion must be denied.

17  
 18 **B. CREDITOR REQUESTS AN OPPORTUNITY TO OBTAIN A VERIFIED APPRAISAL OF THE SUBJECT PROPERTY**

19 11 U.S.C. § 506(a) provides that an allowed claim of a creditor secured by a lien  
 20 on property in which the estate has an interest...is a secured claim to the extent of the  
 21 value of such creditor’s interest in the estate’s interest in such property.

22 The Debtor’s Motion alleges the Subject Property’s value is \$280,000.00 and  
 23 requests the Court to reduce Creditor’s secured claim from \$330,345.25 to a secured claim  
 24 of \$280,000.00. Creditor requests a continuance of Debtor’s Motion for at least 60 days  
 25 to allow the Creditor to obtain a verified appraisal of the Subject Property. As it will  
 26 require access to the Subject Property to conduct an interior inspection, the Creditor would

1 request the cooperation of the Debtor. Based upon the foregoing, Creditor requests that  
2 the Court continue the Debtors' Motion for at least 60 days to allow the Creditor to  
3 conduct an appraisal on the Subject Property.

4 WHEREFORE, Creditor respectfully requests:

- 5 1. The Debtor's Motion to value Collateral be denied; or in the alternative,
- 6 2. The Debtor's Motion to Value Collateral be continued for at least 60 days  
7 to afford the Creditor an opportunity to obtain an appraisal of the Subject Property; and
- 8 3. For such other and further relief as this Court deems just and proper.

9  
10 DATED this 6th day of August, 2020.

11  
12 **TIFFANY & BOSCO, P.A.**

13 By /s/ Ace C. Van Patten, Esq.  
14 ACE C. VAN PATTEN, ESQ.  
15 Attorney for Secured Creditor  
16 10100 W. Charleston Boulevard  
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Las Vegas, NV 89135

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CENSO LLC.,

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Chapter 11

**CERTIFICATE OF SERVICE**

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1. On this 6th day of August, 2020, I served the following documents:

**RESPONSE TO MOTION TO VALUE COLLATERAL AND MODIFY RIGHTS  
OF SELENE FINANCE LP PURSUANT TO 11 U.S.C §506(a), §1111, AND §1123  
(1161 DANA MAPLE COURT, LAS VEGAS, NV 89123)**

2. I caused to be served the above-named document by the following means to the  
persons as listed below:

**X a. ECF System**

Corey B. Beck  
[becksbk@yahoo.com](mailto:becksbk@yahoo.com)  
Attorney for Debtor

U.S. Trustee - LV - 11  
[USTPRegion17.lv.ecf@usdoj.gov](mailto:USTPRegion17.lv.ecf@usdoj.gov)  
Trustee

1           **X b. United States mail, postage fully prepaid:**

2                   Corey B. Beck  
3                   425 South 6th Street  
4                   Las Vegas, NV 89101  
5                   Attorney for Debtor

6                   Censo LLC.  
7                   9811 W. Charleston Blvd.  
8                   Suite 2-351  
9                   Las Vegas, NV 89117  
10                  Debtor

11           **I declare under penalty of perjury the foregoing is true and correct.**

12           DATED this 6th day of August, 2020.

13           By: /s/ Michelle Benson